

WORK SESSION - CITY COUNCIL - CITY OF NEWTON

SEPTEMBER 7, 2004

The City Council of the City of Newton held a Work Session at 5:30 PM on Tuesday, September 7, 2004 at City Hall with the following present: Mayor Robert Mullinax, Council Members Al Gaither, Wayne Dellinger, Tom Dixon, Tom Rowe, Anne Stedman, Roy Johnson, City Manager Edward Burchins, Assistant City Manager Glenn Pattishall, City Attorney Larry Pitts and City Clerk Rita Williams.

Mayor Mullinax called the Work Session to order and stated it was being held to discuss water and sewer extensions for those areas not presently served with those services. He said he hoped the Council could accomplish three items tonight:

- (1) Make a decision whether the City will provide water and sewer services to areas that don't have them,
- (2) Determine the areas, and
- (3) Decide how these services can be paid for

City Manager Burchins reviewed a map of Newton which showed 16 areas which do not have water or sewer service. The cost for providing both services to all the areas is estimated to be \$3,404,300.

Public Works and Utilities Director Marty Wilson presented the following information on areas not presently served with water and sewer:

- Presently approximately 74 existing housing units do not have access to city water (1.3 % of all accounts)
- Presently approximately 566 existing housing units do not have access to city sewer (11.2 %)
- The total cost to extend water lines to serve all areas is estimated to be \$916,000.
- The total cost to extend sewer lines to serve all areas is estimated to be \$9,170,000
- Sewer construction cost estimates are based on using Low Pressure Sewer system in most of Westside annexation area subdivisions.
- The total for both water and sewer is estimated to be \$10,086,000

POTENTIAL AREAS FOR WATER SERVICE

Area	#Units	Cost/Unit	Total Cost
Prestige Heights	31	\$ 9,350	\$ 289,400
Westside Hills (Fye Drive)	13	\$ 9,550	\$ 124,200
Pope Drive	14	\$13,050	\$ 182,900
Quail Hill	8	\$18,450	\$ 147,000
Snowhill	8	\$21,500	\$ 172,000
Total	74	\$12,400	\$ 915,900

POTENTIAL AREAS FOR SEWER SERVICE

Area	#Unit	Cost/Unit	Total Cost
Betts Brooke*	34	\$ 6,950	\$ 236,150
Westside Hills*	84	\$ 7,950	\$ 668,850

Potential Areas for Sewer Continued

Area	#Unit	Cost/Unit	Total Cost
Dixie Park*	30	\$ 9,500	\$ 286,650
Starmount Village*	94	\$10,000	\$ 939,100
Nottingham*	79	\$10,900	\$ 859,950
Wyoming Street*	25	\$ 8,650	\$ 215,650
Prestige Heights	31	\$14,750	\$ 457,300
Snowhill/Eastmont	29	\$18,850	\$ 547,350
Mt. Olive Church	11	\$21,000	\$ 233,400
Radio Station Road/Shannonbrook			
Area	31	\$22,200	\$ 687,950
Pope Drive	14	\$22,450	\$ 313,950
Quail Hill	8	\$25,750	\$ 206,100
Old Conover/Startown Road	67	\$28,200	\$1,887,800
Winstead/Warlick	11	\$44,400	\$ 488,650
Old St. Pauls Church	18	\$63,400	\$1,141,150

Total Sewer	566	\$16,200	\$9,170,000
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* Indicates costs based on Low Pressure Sewer

Areas Recommended for Phase I - Water

Area	#Unit	Cost/Unit	Total Cost
Prestige Heights	31	\$ 9,350	\$ 289,400
Westside Hills (Fye Drive)	13	\$ 9,550	\$ 124,200
Total Water	44	\$ 9,400	\$ 413,600

Areas Recommended for Phase I - Sewer

Betts Brooke*	34	\$ 6,950	\$ 236,150
Westside Hills*	84	\$ 7,950	\$ 668,850

Dixie Park*	30	\$ 9,550	\$ 286,650
Starmount Village	94	\$10,000	\$ 939,100
Nottingham	79	<u>\$10,900</u>	<u>\$ 859,950</u>
 Total Sewer	 321	 \$ 9,320	 \$2,990,700
Total Water and Sewer			\$3,404,300

The Council discussed at length the different areas needing water and sewer service and stated that they should designate several areas to survey to see if people in those areas are willing to tap onto City services.

After considerable discussion, a motion was made by Council Member Dellinger, seconded by Council Member Gaither, and unanimously adopted that:

1. the City staff send survey letters to property owners of Starmount Village and Nottingham indicating the City's interest in extending water and sewer to these areas
2. ask them if they are interested in attending a public meeting to indicate their interest in obtaining water and sewer service

Members of the Council indicated that if these two areas are not interested in water and sewer, that the Council will move onto other areas on the list.

Mayor Mullinax suggested that since there was additional time before the regular meeting that the Council hold the Closed Session which was planned as part of the regular meeting. He stated the Council needed to discuss location/expansion of industry G. S. 143-318.11(a)(4).

A motion was made by Council Member Johnson, seconded by Council Member Rowe, and unanimously adopted that the Council go into Closed Session to discuss location/expansion of industry.

After the Closed Session, Mayor Mullinax called the meeting back into regular session and stated the Council would take action on the matter during the regular meeting.

A motion was made by Council Member Dellinger, seconded by Council Member Rowe, and unanimously adopted that the meeting be adjourned.

Respectfully submitted,

Robert A. Mullinax, Mayor

Rita K. Williams, City Clerk

REGULAR MEETING - CITY COUNCIL - CITY OF NEWTON

SEPTEMBER 7, 2004

The City Council of the City of Newton held a regular meeting at 7:00 PM on Tuesday, September 7, 2004 at City Hall with the following present: Mayor Robert Mullinax, Council Members Al Gaither, Wayne Dellinger, Tom Dixon, Tom Rowe, Anne Stedman, Roy Johnson, City Manager Edward Burchins, Assistant City Manager Glenn Pattishall, City Attorney Larry Pitts and City Clerk Rita Williams.

ITEM 1 - CALL TO ORDER.

Mayor Mullinax called the meeting to order and welcomed citizens in the audience.

ITEM 2 - OPENING.

Council Member Johnson gave the invocation and led the Pledge of Allegiance.

ITEM 3 - APPROVAL OF MINUTES OF THE AUGUST 11, 2004 REGULAR MEETING AND MINUTES OF THE FOLLOWING CLOSED SESSIONS: FEBRUARY 18, 2004, MARCH 17, 2004, APRIL 6, 2004 AND MAY 4, 2004.

A motion was made by Council Member Johnson, seconded by Council Member Gaither, and unanimously adopted that the minutes of the August 11, 2004 regular meeting and minutes of the February 18, 2004, March 17, 2004, April 6, 2004 and May 4, 2004 Closed Sessions be approved as submitted.

ITEM 4 - CONSIDERATION OF APPROVAL OF CONSENT AGENDA ITEMS.

A motion was made by Council Member Dellinger, seconded by Mayor Pro Tem Rowe, and unanimously adopted that the following items on the Consent Agenda be approved as submitted:

A. Tax refunds. (approved)

Tax Year	Tax Refund Number	Name	Reason	Amount of Refund
1999	4	Piedmont Foam, Inc.	Property taxed in wrong jurisdiction	\$565.20
2000	5	Piedmont Foam, Inc	Property taxed in wrong jurisdiction	\$617.58
2001	6	Piedmont Foam, Inc	Property taxed in wrong	\$1,454.93

			jurisdiction	
2002	7	Piedmont Foam, Inc	Property taxed in wrong jurisdiction	\$1,294.66
2003	8	Piedmont Foam, Inc	Property taxed in wrong jurisdiction	\$1,070.65

B. Tax releases. (approved)

Tax Year	Tax Release Number	Reason for Release	Amount of Release
2004	1	Full Release Not Rebilled	\$2.20
2004	2	Full Release Not Rebilled	\$1,430.44

C. Consideration of initiating court proceedings on John Howell code enforcement case. (approved)

RESOLUTION # 34-2004

RESOLUTION OF THE CITY COUNCIL

OF THE CITY OF NEWTON

CONCERNING:

OWNER/OCCUPANT/TENANT: John Howell

OWNER'S ADDRESS: 26 3rd Ave NE, Hickory, NC 28601-5013

PROPERTY ADDRESS: 146 S. Ervin Ave., Newton, NC 28658

TAX MAP REFERENCE: MAP 19N, BLOCK 03 LOT 12 (COUNTY Catawba)

PIN: 3740 17 22 1081

BEING A RESOLUTION directing the City Attorney for the City of Newton pursuant to Chapter 16 Nuisances of the City of Newton Code to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by Chapter 16, Sections 16-4 Nuisance of the City Code; and

WHEREAS, the City Council of the City of Newton finds that the property herein described is a safety and health hazard to the public under the provisions of the Nuisance Code and that the provisions of said Code have been complied with as a condition to the adoption of this resolution; and

WHEREAS, the owner of said property has failed and refused to comply with a lawful order of the Code Enforcement Officer to remove the same to meet the requirements of

Nuisances Code within the time period prescribed;

NOW, THEREFORE; be it resolved by the City Council of the City of Newton that the City Attorney for the City of Newton pursuant to Chapter 16, Sections 16-4 Code of the City be authorized and directed to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by the North Carolina General Statutes, said Order of the Code Enforcement Officer being dated July 7, 2004 and incorporated by reference into this Resolution.

ADOPTED THIS 7TH DAY OF SEPTEMBER, 2004

ROBERT A. MULLINAX, MAYOR

ATTEST:

RITA K. WILLIAMS, CITY CLERK

- D. Consideration of adoption of Fire Conditions report. (adopted)
- E. Consideration of petition to change the speed limit on Rankin Avenue between E. 20th Street and 21st Street from 35 PMH to 25 MPH. (adopted)

ORDINANCE #2004.34 ATTACHED

- F. Consideration of agreement and resolution on signal light maintenance with DOT. (adopted)

RESOLUTION #35-2004

COPY OF RESOLUTION PASSED BY THE CITY COUNCIL OF
THE CITY OF NEWTON, NORTH CAROLINA

WHEREAS, the Department and the Municipality have a mutual interest in the efficient and effective operation of traffic signals within the Municipality of NEWTON; and

WHEREAS, the provisions of the North Carolina General Statutes 136-66.1 and 136-18, authorize the Municipality to contract with the Department for the installation, repair and maintenance of highway signs and markings, electric traffic signals and other traffic control devices on State Highway System streets within the Municipality; and

WHEREAS, the Department and the Municipality proposed to enter into an Agreement for the maintenance of traffic signals which are on the State Highway system; and

WHEREAS, the Municipality has agreed to maintain and operate the traffic signals which are a part of the State Highway System within the Municipality, subject to reimbursement by the Department as set forth in this Agreement; and

WHEREAS, this Agreement shall cover the maintenance and operation of the traffic signals for the period from 2002, through 2003, with mutually agreed upon extension being made in one (1) year increments, up to a total duration of five (5) years.

NOW, THEREFORE, BE IT RESOLVED that this agreement is hereby formally approved by the City Council of the City of Newton and that the City Manager and Clerk of this Municipality are hereby empowered to sign and execute the Agreement between the City of Newton and the Department of Transportation.

Witness my hand and the official seal of said Municipality, on this the 7th day of September, 2004.

Rita K. Williams, City Clerk of
Newton, North Carolina

ITEM 5 - PUBLIC HEARING ON FINANCING WASTEWATER TREATMENT PLANT IMPROVEMENTS.

Required Action:

- A.1 Resolution making certain findings on financing of improvements to Clarks Creek Wastewater Treatment Plant.
- A.2 Local Government Commission approval of financing arrangement requests.
- A.3 Authorize execution and delivery of Deed of Trust.
- A.4 Approval of BB&T Resolution approving financing terms.
- A.5 Consideration of budget ordinance for debt service payment on Clarks Creek Wastewater Treatment Plant improvement loan.

Finance Director Baker reviewed the above documents and recommended they be approved. He recommended Branch Banking and Trust Company be designated as the Deed of Trust Trustee and that the interest rate of 3.97% on \$2,300,000.00 to be borrowed for improvements for the waste treatment plant improvements be accepted with the City's waste treatment plant property being designated as collateral.

Return After Recording To:

F. Louis Loyd, III
Senior Vice President
Branch Banking and Trust Company
Post Office Box 31273
Charlotte, NC 28231

This instrument has been preaudited in the

manner required by The Local Government
Budget and Fiscal Control Act.

James A. Baker
Finance Officer
City of Newton, North Carolina

FINANCING AGREEMENT AND DEED OF TRUST

STATE OF NORTH CAROLINA)	COLLATERAL IS OR
)	INCLUDES FIXTURES
CATAWBA COUNTY)	

THIS FINANCING AGREEMENT AND DEED OF TRUST (this "Agreement") is dated as of October ___, 2004, and is granted by the CITY OF NEWTON, NORTH CAROLINA, a public body of the State of North Carolina (the "City"), to F. Louis Loyd, III, a citizen and resident of Mecklenburg County, North Carolina (the "Deed of Trust Trustee"), for the benefit of BRANCH BANKING AND TRUST COMPANY ("BB&T").

R E C I T A L S:

The City has the power, pursuant to Section 160A-20 of the North Carolina General Statutes, to enter into installment contracts to finance the purchase or improvement of real or personal property, and to secure its obligations under such contracts by security interests in all or a portion of the property purchased or improved. This Agreement provides for BB&T to advance \$2,300,000.00 to the City to enable the City to re-finance the Facilities (as defined below) on and for the Site (as defined below), and provides for securing the City's obligations under this Agreement by creating certain security interests in favor of BB&T.

This Agreement secures current advances of \$2,300,000.00. The current scheduled date for final repayment is on or about October ___, 2019.

NOW, THEREFORE,

(1) in consideration of the execution and delivery of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged;

(2) to secure the City's performance of all its covenants under this Agreement, including the repayment of amounts advanced and to be advanced, together with interest on all such advances as provided in this Agreement or any amendments hereto, and all charges and expenses of collection (including court costs and

reasonable attorneys' fees and expenses); and

(3) to charge the Mortgaged Property, as defined below, with such payment and performance,

the City hereby sells, grants and conveys to the Deed of Trust Trustee, his heirs and assigns forever, in trust, with power of sale, the following (collectively, the "Mortgaged Property"):

(a) (I) the property described in Exhibit A, (ii) any other real property acquired by the City with the proceeds made available to the City pursuant to this Agreement, and (iii) all real property hereafter acquired by the City in replacement of, or in substitution for, all or any part of any property described in this subparagraph, and in all cases together with all easements, rights, liberties, rights-of-way and appurtenances belonging to any such property (collectively, the "Site");

(b) the improvements described in Exhibit B and all other improvements and fixtures now or hereafter attached or appurtenant to or used in or on those improvements or the Site, including (I) all renewals and replacements thereof and all additions thereto, (ii) all articles in substitution thereof, (iii) all building materials for construction or repair of such improvements upon their delivery to the Site, and (iv) all proceeds of all the foregoing in whatever form resulting from the loss or disposition of the foregoing, including all proceeds of and unearned premiums for any insurance policies covering the Site and such improvements, proceeds of title insurance and payments related to the exercise of condemnation or eminent domain authority, and all judgments or settlements in lieu of any of the foregoing (collectively, the "Facilities"); and

(c) the Equipment, as defined in Section 2.03.

TO HAVE AND TO HOLD the Mortgaged Property with all privileges and appurtenances thereunto belonging, to the Deed of Trust Trustee, his heirs and assigns forever, upon the trusts, terms and conditions and for the purposes set out below, in fee simple in trust;

SUBJECT, HOWEVER, to the encumbrances described in Exhibit C (the "Existing Encumbrances");

BUT THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST: if the Required Payments (as defined below) are paid in full in accordance with this Agreement, and the City shall comply with all of the terms, covenants and conditions of this Agreement, this conveyance shall be null and void and shall be canceled of record at the City's request and cost, and title shall revest as provided by law.

BUT IF, HOWEVER, THERE SHALL OCCUR AN EVENT OF DEFAULT UNDER THIS AGREEMENT, then BB&T shall have the remedies provided for in this Agreement, including directing the Deed of Trust Trustee to sell the Mortgaged Property under power of sale.

THE CITY COVENANTS AND AGREES with the Deed of Trust Trustee and BB&T (and their respective heirs, successors and assigns), in consideration of the foregoing, as follows:

ARTICLE I

DEFINITIONS; INTERPRETATION

Unless the context clearly requires otherwise, capitalized terms used in this Agreement and not otherwise defined shall have the following meanings:

"Additional Payments" means any of BB&T's reasonable and customary fees and expenses related to the transactions contemplated by this Agreement, any of BB&T's expenses (including attorneys' fees) in prosecuting or defending any action or proceeding in connection with this Agreement, any required license or permit fees, state and local sales and use or ownership taxes or property taxes which BB&T is required to pay as a result of this Agreement, inspection and reinspection fees, and any other amounts payable by the City (or paid by BB&T on the City's behalf) as a result of its covenants under this Agreement (together with interest that may accrue on any of the above if the City shall fail to pay the same, as set forth in this Agreement).

"Amount Advanced" has the meaning assigned in Section 2.02.

"Bond Counsel Opinion" means a written opinion (in form and substance acceptable to BB&T) of an attorney or firm of attorneys acceptable to BB&T.

"Budget Officer" means the City officer from time to time charged with preparing the City's draft budget as initially submitted to the Governing Board for its consideration.

"Business Day" means any day on which banks in the State are not by law authorized or required to remain closed.

"City" means the City of Newton, North Carolina.

"City Representative" means the City's Finance Officer or such other person or persons at the time designated, by a written certificate furnished to BB&T and signed on the City's behalf by the presiding officer of the City's Governing Board, to act on the City's behalf for any purpose (or any specified purpose) under this Agreement.

"Closing Date" means the date on which this Agreement is first executed and delivered by the parties.

"Code" means the Internal Revenue Code of 1986, as amended, including regulations, rulings and revenue procedures promulgated thereunder or under the Internal Revenue Code of 1954, as amended, as applicable to the City's obligations under this Agreement and all proposed (including temporary) regulations which, if

adopted in the form proposed, would apply to such obligations. Reference to any specific Code provision shall be deemed to include any successor provisions thereto.

"Event of Default" means one or more events of default as defined in Section 8.01.

"Event of Nonappropriation" means any failure by the Governing Board to adopt, by the first day of any Fiscal Year, a budget for the City that includes an appropriation for Required Payments as contemplated by Section 3.05.

"Existing Encumbrances" means the encumbrances described in Exhibit C.

"Fiscal Year" means the City's fiscal year beginning October 1, or such other fiscal year as the City may later lawfully establish.

"Governing Board" means the City's governing board as from time to time constituted.

"Installment Payments" means the payments payable by the City pursuant to Section 3.01.

"LGC" means the North Carolina Local Government Commission.

"Mortgaged Property" means the Mortgaged Property, as defined above.

"Net Proceeds," when used with respect to any amounts derived from claims made on account of insurance coverages required under this Agreement, any condemnation award arising out of the condemnation of all or any portion of the Mortgaged Property, payments on any bonds required by Section 5.03, any amounts recovered from any contractor on an action for default or breach, as described in Section 5.03, or any amounts received in lieu or in settlement of any of the foregoing, means the amount remaining after deducting from the gross proceeds thereof all expenses (including attorneys' fees and costs) incurred in the collection of such proceeds, and after reimbursement to the City or BB&T for amount previously expended to remedy the event giving rise to such payment or proceeds.

"Payment Dates" means the dates indicated in Exhibit D.

"Permitted Encumbrances" means, as of any particular time, (a) the Existing Encumbrances, (b) liens for taxes and assessments not then delinquent, (c) this Agreement, and (d) easements, rights-of-way and other such minor defects or restrictions as normally exist with respect to property of the same general character as the Mortgaged Property which will not impair the City's intended use of the Mortgaged Property.

"Plans and Specifications" means all plans and specifications for the Facilities prepared by architects, engineers and other consultants.

"Prime Rate" means the interest rate so denominated and set by Branch Banking & Trust Company of North Carolina (whether or not such Bank, or any affiliate thereof, is at any time the beneficiary under this Agreement) as its "Prime Rate," as in effect from time to time.

"Required Payments" means Installment Payments and Additional Payments.

"Section 160A-20" means Section 160A-20 of the North Carolina General Statutes, as amended, or any successor provision of law.

"State" means the State of North Carolina.

"UCC" means the Uniform Commercial Code or any successor law as in effect from time to time in the State, currently Chapter 25 of the North Carolina General Statutes.

All references in this Agreement to designated "Sections" and other subdivisions are to the designated sections and other subdivisions of this Agreement. The words "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision unless the context indicates otherwise. Words importing the singular number shall include the plural number and vice versa.

ARTICLE II

SECURITY PROVIDED BY THIS AGREEMENT; ADVANCE

2.01. Security for Payment and Performance. This Agreement secures the City's payment, as and when the same shall become due and payable, of all Required Payments and the City's timely compliance with all terms, covenants and conditions of this Agreement.

2.02. Advance. BB&T advances \$2,300,000.00 (the "Amount Advanced") to the City on the Closing Date, and the City hereby accepts the Amount Advanced from BB&T. BB&T is paying the full amount of the Amount Advanced to the City simultaneously with the execution and delivery of this Agreement.

2.03. UCC Security Agreement.

(a) This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect to all personal property acquired by the City with funds advanced by BB&T pursuant to this Agreement, all personal property obtained in substitution or replacement therefore, and all personal property obtained in substitution or replacement for any portion of the Mortgaged Property, and all proceeds of the foregoing (collectively, the "Equipment").

The City hereby grants to BB&T a security interest in the Equipment to secure the Required Payments.

(b) The security interest in the Equipment granted in this Section shall be in addition to, and not in lieu of, any lien upon or security interest in the Equipment acquired by real property law.

(c) The City shall execute, deliver and file, or cause to be filed, in such place or places as may be required by law, financing statements (including any continuation statements required by the UCC or requested by BB&T) in such form as BB&T may reasonably require to perfect and continue the security interest in the Equipment.

2.04. City's Limited Obligation. (a) THE PARTIES INTEND THAT THIS TRANSACTION COMPLY WITH SECTION 160A-20. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE CITY'S FAITH AND CREDIT WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS A DELEGATION OF GOVERNMENTAL POWERS OR AS AN IMPROPER DONATION OR A LENDING OF THE CITY'S CREDIT WITHIN THE MEANING OF THE STATE CONSTITUTION. NO DEFICIENCY JUDGMENT MAY BE RENDERED AGAINST THE CITY IN VIOLATION OF SECTION 160A-20. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys (other than the funds held under this Agreement), nor shall any provision of this Agreement restrict the future issuance of any of the

City's bonds or obligations payable from any class or source of the City's moneys (except to the extent this Agreement restricts the incurrence of additional obligations secured by the Mortgaged Property). To the extent of any conflict between this Section and any other provision of this Agreement, this Section shall take priority.

(b) Nothing in this Section is intended to impair or prohibit foreclosure on this Agreement if the Required Payments are not paid when due or otherwise upon the occurrence of an Event of Default under this Agreement, and in any such event BB&T may request the Deed of Trust Trustee to foreclose on the Mortgaged Property as provided in this Agreement.

2.05. City's Continuing Obligations. The City shall remain liable for full performance of all its covenants under this Agreement (subject to the limitations described in Section 2.04), including payment of all Required Payments, notwithstanding the occurrence of any event or circumstances whatsoever, including any of the following:

(a) BB&T's waiver of any right granted or remedy available to it;

(b) The forbearance or extension of time for payment or performance of any obligation under this Agreement, whether granted to the City, a subsequent owner of the Facilities or the Equipment or any other person;

(c) The release of all or part of the Mortgaged Property or the release of any party who assumes all or any part of such performance;

(d) Any act or omission by BB&T (but this section provision does not relieve BB&T of any of its obligations under this Agreement);

(e) The sale of all or any part of the Mortgaged Property; or

(f) Another party's assumption of the City's obligations under this Agreement.

2.06. Construction Mortgage. The security interest evidenced hereby is a "construction mortgage" within the meaning of Section 25-9-313 of the North Carolina General Statutes.

2.07. Security Interest in Utility Equipment; Grant of Easements and Other Rights. (a) The City hereby grants BB&T a security interest in any pipes, valves, fittings, wires and poles or any other utility-type property to be financed with the proceeds made available to the City pursuant to this Agreement, as well as in all substitutions, replacements and proceeds therefore or thereof (for the purposes of this Agreement, the "Utility Equipment"). The parties agree and intend that, even if all or any part of the Utility Equipment is installed in or on the ground, all the Utility Equipment shall be and remain personal property subject to the security interest granted in this Section. This Agreement is intended as and constitutes a security agreement pursuant to the UCC with respect to the Utility Equipment and the security interest therein. The Utility Equipment is part of the Equipment and therefore part of the Mortgaged Property.

(b) The City may install the Utility Equipment over or across property as to which the City owns only an easement interest or some other limited interest, such as rights under an encroachment agreement with the North Carolina Department of Transportation. The City hereby sells and grants to BB&T (in connection with

effecting remedies on default) such licenses or other rights as may be necessary or desirable for BB&T or its agents to enter the real estate that is subject to such easements and other interests to remove, construct, operate, maintain and inspect the Utility Equipment. The City grants these licenses in connection with the other interests granted under this Agreement to BB&T with the intent that such licenses thereby qualify as licenses coupled with an interest so as to be irrevocable.

(c) The City hereby makes a collateral assignment to BB&T of its rights under such easements and other interests. If any Event of Default shall be continuing, then to the extent permitted by law, BB&T shall have all the City's rights under the easements and other interests.

ARTICLE III

CITY'S PAYMENT OBLIGATION AND RELATED MATTERS

3.01. Installment Payments. The City shall repay the amount advanced by making Installment Payments to BB&T in lawful money of the United States at the times and in the amounts set forth in Exhibit D, except as otherwise provided in this Agreement. As indicated in Exhibit D, the Installment Payments reflect the repayment of the Amount Advanced and include designated interest components.

3.02. Additional Payments. The City shall pay all Additional Payments on a timely basis directly to the person or entity to which such Additional Payments are owed in lawful money of the United States.

3.03. Prepayment. The City may prepay the outstanding principal component of the Amount Advanced, at its option on any scheduled Payment Date, in whole but not in part, by paying (a) all Additional Payments then due and payable, (b) all interest accrued and unpaid to the prepayment date, and (c) 100% of the outstanding principal amount.

3.04. Late Payments. If the City fails to pay any Installment Payment when due, the City shall pay additional interest on the principal component of the late Installment Payment (as permitted by law) at an annual rate equal to the Prime Rate from the original due date.

3.05. Appropriations. (a) The Budget Officer shall include in the initial proposal for each of the City's annual budgets the amount of all Installment Payments and estimated Additional Payments coming due during the Fiscal Year to which such budget applies. Notwithstanding that the Budget Officer includes such an appropriation for Required Payments in a proposed budget, the Governing Board may determine not to include such an appropriation in the City's final budget for such Fiscal Year.

(b) The Budget Officer shall deliver to BB&T, within 15 days after the beginning of each Fiscal Year, a certificate stating whether an amount equal to the Installment Payments and estimated Additional Payments coming due during the next Fiscal Year has been appropriated by the City in such budget for such purposes. If such amount has not been so appropriated, the Budget Officer shall send a copy of such certificate to the LGC, to the attention of its Secretary, at the Albemarle Building, 325 North Salisbury St., Raleigh NC 27603-1385.

(c) The actions required of the City and its officers pursuant to this Section shall be deemed to be and shall be construed to be in fulfillment of ministerial duties, and it shall be the duty of each and every City official to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the actions required

pursuant to this Section and the remainder of this Agreement to be carried out and performed by the City.

(d) The City reasonably believes that it can obtain funds sufficient to pay all Required Payments when due.

3.06. No Abatement. There shall be no abatement or reduction of the Required Payments for any reason, including, but not limited to, any defense, recoupment, setoff, counterclaim, or any claim (real or imaginary) arising out of or related to the Site or of the Facilities, except as expressly provided in this Agreement. The City assumes and shall bear the entire risk of completion, loss and damage to the Site and the Facilities from any cause whatsoever. The Installment Payments shall be made in all events unless the City's obligation to make Installment Payments is terminated as otherwise provided in this Agreement.

3.07. Interest Rate and Payment Adjustment. (a) "Rate Adjustment Event" means any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining (i) that the interest component of Installment Payments, or any portion thereof, is includable in any beneficiary's gross income for federal income tax purposes or (ii) that the City's obligations under this Agreement are not "qualified tax-exempt obligations" within the meaning of Code Section 265 (a "265 Event"), in any case as a result of any misrepresentation by the City or as a result of any action the City takes or fails to take.

(b) Upon any Rate Adjustment Event, (i) the unpaid principal portion of the Amount Advanced shall continue to be payable on dates and in amounts as set forth in Exhibit D, but (ii) the interest components of the Installment Payments shall be recalculated, at an interest rate equal to an annualized interest rate equal to the Prime Rate plus 2% (200 basis points), to the date (retroactively, if need be) determined pursuant to the Rate Adjustment Event to be the date interest became includable in any beneficiary's gross income for federal income tax purposes (in the case of a 265 Event, retroactively to the Closing Date).

(c) The City shall pay interest at such adjusted rate (subject to credit for interest previously paid) to each affected beneficiary, notwithstanding the fact that any particular beneficiary may not be a beneficiary under this Agreement on the date of a Rate Adjustment Event. The City shall additionally pay to all affected beneficiaries any interest, penalties or other charges assessed against or payable by such beneficiary and attributable to a Rate Adjustment Event notwithstanding the prior repayment of the entire Amount Advanced or any transfer to another beneficiary.

ARTICLE IV

CITY'S COVENANTS, REPRESENTATIONS AND WARRANTIES

4.01. Warranties of Title. The City covenants with the Deed of Trust Trustee and BB&T that the City is seized of and has the right to convey the Mortgaged Property in fee simple, that the Mortgaged Property is free and clear of all liens and encumbrances other than the Existing Encumbrances, that title to the Mortgaged Property is marketable, and that the City will forever warrant and defend title to the Mortgaged Property against the claims of all persons.

4.02. Indemnification. To the extent permitted by law, the City shall indemnify, protect and save the Deed of Trust Trustee, BB&T and its officers and directors, and the LGC's members and employees, harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Mortgaged Property or the transactions contemplated by this

Agreement, including without limitation the possession, condition, construction or use of the Facilities or the Equipment. The indemnification arising under this Section shall survive the Agreement's termination.

4.03. Covenant as to Tax Exemption. (a) The City shall not take or permit, or omit to take or cause to be taken, any action that would cause its obligations under this Agreement to be "arbitrage bonds" or "private activity bonds" within the meaning of the Code, or otherwise adversely affect the exclusion from gross income for federal income tax purposes of the designated interest component of Installment Payments to which such components would otherwise be entitled and, if it should take or permit, or omit to take or cause to be taken, any such action, the City shall take or cause to be taken all lawful actions within its power necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(b) In particular, the City covenants that it shall not permit the Amount Advanced, plus the investment earnings thereon (the "Proceeds"), to be used in any manner that would result in 5% or more of the Installment Payments being directly or indirectly secured by an interest in property, or derived from payments in respect of property or borrowed money, being in either case used in a trade or business carried on by any person other than a governmental City, as provided in Code Section 141(b), or result in 5% or more of the Proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental City, as provided in Code Section 141(c); provided, however, that if the City receives a Bond Counsel Opinion that compliance with any such covenant is not required to prevent the interest components of Installment Payments from being includable in the beneficiary's gross income for federal income tax purposes under existing law, the City need not comply with such covenant.

(c) Unless the City qualifies for one or more exceptions to the arbitrage rebate requirement with respect to this financing, the City shall provide for the rebate to the United States of (I) at least 90% of the required rebate amount (A) on or before 60 days after the date that is five years from the Closing Date, and (B) at least once during each five years thereafter while the Obligations remain outstanding, and (ii) the entire required rebate amount on or before 60 days after the date of final payment of the Obligations. Payments shall be made in the manner prescribed by the Internal Revenue Service. The City shall cause the required rebate amount to be recomputed as of each fifth anniversary of the Closing Date, and again as of the date of final payment of the Obligations. The City shall provide BB&T with a copy of the results of such computation within 20 days after the end of each computation period or final payment of the Obligations. Each computation shall be prepared or approved, at the City's expense, by a person with experience in matters of accounting for federal income tax purposes, a bona fide arbitrage rebate calculating and reporting service, or nationally-recognized bond counsel, in any case reasonably acceptable to BB&T. The City shall engage such rebate consultant to perform the necessary calculations not less than 60 days prior to the date of the required payment.

(d) The City acknowledges that its personnel must be familiar with the arbitrage rebate rules, because the tax-exempt status of the interest on the Obligations depends upon continuing compliance with such rules. The City therefore covenants to take all reasonable action to assure that City personnel responsible for the investment of and accounting for financing proceeds comply with such rules.

4.04. Validity of Organization and Acts. The City is validly organized and existing under State law, has full power to enter into this Agreement and has duly authorized and has obtained all required approvals and all other necessary acts required prior to the execution and delivery of this Agreement. This Agreement is a valid, legal and binding obligation of the City.

4.05. Maintenance of Existence. The City shall maintain its existence, shall continue to be a local governmental City of the State, validly organized and existing under State law, and shall not consolidate with or merge into another local governmental City of the State, or permit one or more other local governmental units of the State to consolidate with or merge into it, unless the local governmental unit thereby resulting assumes the City's obligations under this Agreement.

4.06. Acquisition of Permits and Approvals. All permits, consents, approvals or authorizations of all governmental entities and regulatory bodies, and all filings and notices required on the City's part to have been obtained or completed as of today in connection with the authorization, execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the acquisition and construction of the Facilities have been obtained and are in full force and effect, and there is no reason why any future required permits, consents, approvals, authorizations or orders cannot be obtained as needed.

4.07. No Breach of Law or Contract. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, (a) to the best of the City's knowledge, constitutes a violation of any provision of law governing the City or (b) results in a breach of the terms, conditions or provisions of any contract, agreement or instrument or order, rule or regulation to which the City is a party or by which the City is bound.

4.08. No Litigation. There is no litigation or any governmental administrative proceeding to which the City (or any official thereof in an official capacity) is a party that is pending or, to the best of the City's knowledge after reasonable investigation, threatened with respect to (a) the City's organization or existence, (b) its authority to execute and deliver this Agreement or to comply with the terms of this Agreement, (c) the validity or enforce ability of this Agreement or the transactions contemplated hereby, (d) the title to office of any Governing Board member or any other City officer, (e) any authority or proceedings relating to the City's execution or delivery of this Agreement, or (f) the undertaking of the transactions contemplated by this Agreement.

4.09. No Current Default or Violation. (a) The City is not in violation of any existing law, rule or regulation applicable to it, (b) the City is not in default under any contract, other agreement, order, judgment, decree or other instrument or restriction of any kind to which the City is a party or by which it is bound or to which any of its assets are subject, including this Agreement, and (c) no event or condition has happened or existed, or is happening or existing, under the provisions of any such instrument, including this Agreement, which constitutes or which, with notice or lapse of time, or both, would constitute an event of default hereunder or thereunder.

4.10. No Misrepresentation. No representation, covenant or warranty by the City in this Agreement is false or misleading in any material respect.

4.11. Environmental Warranties and Indemnification. (a) The City warrants and represents to BB&T as follows:

(i) The City has no knowledge of, and after reasonable inquiry no reason to believe (A) that any industrial use has been made of the Mortgaged Property, (B) that the Mortgaged Property has been used for the storage, treatment or disposal of chemicals or any wastes or materials that are classified by federal, State or local laws as hazardous or toxic substances, or (C) that any manufacturing, landfilling or chemical production has occurred on the Mortgaged Property.

(ii) The Mortgaged Property is in compliance with all federal, State and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980

("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613.

(iii) The City has fully disclosed to BB&T in writing the existence, extent and nature of any hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos), which the City is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and the City has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in compliance with all of the terms, conditions and requirements of such licenses, permits and approvals.

(iv) The City will promptly notify BB&T of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will promptly send to BB&T copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) To the extent permitted by law, the City shall indemnify and hold BB&T and the Deed of Trust Trustee harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Deed of Trust Trustee or BB&T as a direct or indirect result of any warranty or representation made by the City in subsection (a) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by the Deed of Trust Trustee, BB&T or the City or any transferee or assignee of the Deed of Trust Trustee, BB&T or the City.

(c) The City's obligations under this Section shall continue in full effect notwithstanding full payment of the Required Payments or foreclosure under this Agreement or delivery of a deed in lieu of foreclosure.

4.12. Further Instruments. Upon BB&T's request, the City shall execute, acknowledge and deliver such further instruments reasonably necessary or desired by BB&T to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated hereby, and to subject to the liens and security interests hereof and thereof all or any part of the Mortgaged Property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

4.13. BB&T's Advances for Performance of City's Obligations. If the City fails to perform any of its obligations under this Agreement, BB&T is hereby authorized, but not obligated, to perform such obligation or cause it to be performed. All expenditures incurred by BB&T (including any advancement of funds for payment of taxes, insurance premiums or other costs of maintaining the Mortgaged Property, and any associated legal or other expenses), together with interest thereon at the Prime Rate, shall be secured as Additional Payments under this Agreement. The City promises to pay all such amounts to BB&T immediately upon demand.

4.14. Facilities Will Be Used and Useful. The acquisition and construction of the Facilities is necessary and expedient for the City, and will perform essential functions of the City appropriate for units of local government. The City has an immediate need for, and expects to make immediate use of, all of the Facilities, and does not expect such need or use to diminish in any material respect during the term of the Agreement. The Facilities will not be used in any private business or put to

any private business use.

4.15. Financial Information. (a) The City shall send to BB&T a copy of the City's audited financial statements for each Fiscal Year within 30 days of the City's acceptance of such statements, but in any event within 120 days of the completion of such Fiscal Year.

(b) The City shall furnish BB&T, at such reasonable times as BB&T shall request, all other financial information (including, without limitation, the City's annual budget as submitted or approved) as BB&T may reasonably request. The City shall permit BB&T or its agents and representatives to inspect the City's books and records and make extracts therefrom.

4.16. Taxes and Other Governmental Charges. The City shall pay, as Additional Payments, the full amount of all taxes, assessments and other governmental charges lawfully made by any governmental body during the term of this Agreement. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the City shall be obligated to provide for Additional Payments only for such installments as are required to be paid during the Agreement term. The City shall not allow any liens for taxes, assessments or governmental charges with respect to the Mortgaged Property or any portion thereof to become delinquent (including, without limitation, any taxes levied upon the Mortgaged Property or any portion thereof which, if not paid, will become a charge on any interest in the Mortgaged Property, including BB&T's interest, or the rentals and revenues derived therefrom or hereunder).

4.17. City's Insurance. (a) From and after substantial completion of each principal portion of the Facilities, the City shall, at its own expense, acquire, carry and maintain broad-form extended coverage property damage insurance with respect to all improvements in or on the portion of the Site related to such portion of the Facilities in an amount equal to the estimated replacement cost of such improvements. Such property damage insurance shall include BB&T as a loss payee. The City shall provide evidence of such coverage to BB&T promptly upon such substantial completion. Any Net Proceeds of the insurance required by this subsection (a) shall be payable as provided in Section 6.10.

(b) The City shall, at its own expense, acquire, carry and maintain comprehensive general liability insurance in an amount not less than \$1,000,000 for personal injury or death and \$1,000,000 for property damage.

(c) The City shall also maintain workers' compensation insurance issued by a responsible carrier authorized under State law to insure the City against liability for compensation under applicable State law as in effect from time to time.

(d) All insurance shall be maintained with generally recognized responsible insurers and may carry reasonable deductible or risk-retention amounts. All such policies shall be deposited with BB&T, provided that in lieu of such policies there may be deposited with BB&T a certificate or certificates of the respective insurers attesting the fact that the insurance required by this Section is in full effect. Prior to the expiration of any such policy, the City shall furnish BB&T evidence satisfactory to BB&T that the policy has been renewed or replaced or is no longer required by this Agreement.

(e) No City agent or employee shall have the power to adjust or settle any property damage loss greater than \$50,000 with respect to the Mortgaged Property, whether or not covered by insurance, without BB&T's prior written consent.

(f) BB&T shall not be responsible for the sufficiency or adequacy of any required insurance and shall be fully protected in accepting payment on account of

such insurance or any adjustment, compromise or settlement of any loss agreed to by BB&T.

(g) The City shall deliver to BB&T annually by June 30 of each year a certificate stating that the risk coverages required by this Agreement are in effect, and stating the carriers, policy numbers, coverage limits and deductible or risk-retention amounts for all such coverages.

ARTICLE V

CARE AND USE OF FACILITIES

5.01. Compliance with Requirements. (a) The City shall cause the Facilities to be designed and constructed in compliance with all applicable legal requirements, including subdivision, building and zoning regulations. The City shall not initiate or acquiesce in a change in the Site's zoning classification, except with respect to any change that may be appropriate to conform the actual zoning to that appropriate for the use of the Facilities contemplated as of the Closing Date.

(b) The City shall observe and comply promptly with all current and future requirements relating to the Mortgaged Property's use or condition imposed by (i) any judicial, governmental or regulatory body having jurisdiction over the Facilities or any portion thereof or (ii) any insurance company writing a policy covering the Facilities or any portion thereof, whether or not any such requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

(c) The City shall obtain and maintain in effect all licenses and permits required for the Facilities' operation.

(d) The City shall in no event use the Mortgaged Property or any part thereof, nor allow the same to be used, for any unlawful purpose, or suffer any act to be done or any condition to exist with respect to the Mortgaged Property or any part thereof, nor any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

5.02. Use and Operation. The City shall use and operate the Facilities and related facilities as a water treatment plant, and for no other purpose unless required by law. The City shall be solely responsible for the Facilities' operation, and shall not contract with any other person or entity for the Facilities' operation.

5.03. Maintenance and Repairs; Additions. (a) The City shall keep the Mortgaged Property in good order and repair (reasonable wear and tear excepted) and in good operating condition, shall not commit or permit any waste or any other thing to occur whereby the value or usefulness of the Mortgaged Property might be impaired, and shall make from time to time all necessary or appropriate repairs, replacements and renewals.

(b) The City may, also at its own expense, make from time to time any additions, modifications or improvements to the Mortgaged Property that it may deem desirable for its governmental or proprietary purposes and that do not materially impair the effective use, nor materially decrease the value or substantially alter the intended use, of the Mortgaged Property. The City shall do, or cause to be done, all such things as may be required by law in order fully to protect the security of and all BB&T's rights under this Agreement.

(c) Any and all additions to or replacements of the Facilities and all parts thereof shall constitute accessions to the Facilities and shall be subject to all the terms and conditions of this Agreement and included in the "Facilities" for the purposes of this Agreement.

(d) Notwithstanding the provisions of subsection (c) above, however, the City may, from time to time in its sole discretion and at its own expense, install machinery, equipment and other tangible property in or on the Facilities. All such property shall remain the City's sole property in which BB&T shall have no interest; provided, however, that any such property which becomes permanently affixed to the Facilities shall be subject to the lien and security interest arising under this Agreement if BB&T shall reasonably determine that the Facilities would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

5.04. Security. The City shall take all reasonable steps necessary to safeguard the Equipment against theft. The security afforded the Equipment shall at all times be equal to or better than the security afforded the City's personal property that is not subject to this Agreement.

5.05. Utilities. The City shall pay all charges for utility services furnished to or used on or in connection with the Site and the Facilities.

5.06. Risk of Loss. The City shall bear all risk of loss to and condemnation of the Site and the Facilities.

5.07. Condemnation. The City shall immediately notify BB&T if any governmental authority shall institute, or shall notify the City of any intent to institute, any action or proceeding for the taking of, or damages to, all or any part of the Mortgaged Property or any interest therein under the power of eminent domain, or if there shall be any damage to the Mortgaged Property due to governmental action, but not resulting in a taking of any portion of the Mortgaged Property. The City shall file and prosecute its claims for any such awards or payments in good faith and with due diligence and cause the same to be collected and paid over to BB&T, and to the extent permitted by law hereby irrevocably authorizes and empowers BB&T or the Deed of Trust Trustee, in the City's name or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. If the City receives any Net Proceeds arising from any such action, the City shall apply such Net Proceeds as provided in Section 6.10.

5.08. Title. Title to the Site and the Facilities and any and all additions, repairs, replacements or modifications thereto shall at all times be in the City, subject to the lien of this Agreement. Upon the City's payment in full of all Required Payments, BB&T, at the City's expense and request, shall cancel this Agreement.

5.09. No Encumbrance, Mortgage or Pledge of Site or Facilities.

(a) The City shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics' and materialmen's liens), charge, encumbrance or other claim in the nature of a lien on or with respect to the Mortgaged Property, except Permitted Encumbrances. The City shall promptly, at its own expense, take such action as may be duly necessary to discharge any such mortgage, pledge, lien, charge, encumbrance or claim not excepted above which it shall have created, incurred or suffered to exist.

(b) The City shall reimburse BB&T for any expense incurred by BB&T to discharge or remove any such mortgage, pledge, lien, security interest, encumbrance or claim, with interest thereon at the Prime Rate.

5.10. Damage and Destruction; Use of Net Proceeds. (a) The City shall promptly notify BB&T if (I) the Mortgaged Property or any portion thereof is stolen or is destroyed or damaged by fire or other casualty, (ii) a material defect in the construction of the Facilities shall become apparent, or (iii) title to or the use of all or any portion of the Mortgaged Property shall be lost by reason of a defect in title. Each notice shall describe generally the nature and extent of such damage,

destruction or taking.

(b) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is not more than \$50,000, the City shall retain such Net Proceeds and apply the same to the prompt completion, repair or restoration of the Mortgaged Property, and shall promptly thereafter report to BB&T regarding the use of such Net Proceeds.

(c) If the Net Proceeds arising from any single event, or any single substantially related sequence of events, is more than \$50,000, then the City shall cause such Net Proceeds to be paid to an escrow agent (which shall be a bank, trust company or similar entity exercising fiduciary responsibilities) designated by BB&T for deposit in a special escrow fund to be held by such escrow agent. The City shall thereafter provide for the application of all Net Proceeds to the prompt completion, repair or restoration of the Facilities, as the case may be. The escrow agent shall disburse Net Proceeds for the payment of such costs upon receipt of requisitions in such form as BB&T, with the consent of the City and such escrow agent (which consent shall not be unreasonable withheld), shall establish. If the Net Proceeds shall be insufficient to pay in full the cost of completion, repair or restoration, the City shall either (i) complete the work and pay any cost in excess of the Net Proceeds, or (ii) not carry out such completion, repair or restoration, and instead apply the Net Proceeds, together with other available funds as may be necessary, to the prepayment of all outstanding Required Payments pursuant to Section 3.03.

(d) Any repair, restoration, modification, improvement or replacement paid for in whole or in part out of Net Proceeds shall be the City's property and shall be part of the Facilities.

ARTICLE VI

THE DEED OF TRUST TRUSTEE

6.01. Deed of Trust Trustee's Liability. The Deed of Trust Trustee shall suffer no liability by virtue of his acceptance of this trust except such as may be incurred as a result of the Deed of Trust Trustee's failure to account for the proceeds of any sale under this Agreement.

6.02. Substitute Trustees. If the Deed of Trust Trustee, or any successor, shall die, become incapable of acting or renounce his trust, or if for any reason BB&T desires to replace the Deed of Trust Trustee, then BB&T shall have the unqualified right to appoint one or more substitute or successor Deed of Trust Trustees by instruments filed for registration in the office of the Register of Deeds where this Agreement is recorded. Any such removal or appointment may be made at any time without notice, without specifying any reason therefore and without any court approval. Any such appointee shall become vested with title to the Mortgaged Property and with all rights, powers and duties conferred upon the Deed of Trust Trustee by this Agreement in the same manner and to the same effect as though such Deed of Trust Trustee were named as the original Deed of Trust Trustee.

ARTICLE VII

DEFAULTS AND REMEDIES; FORECLOSURE

7.01. Events of Default. An "Event of Default" is any of the following:

(a) The City's failing to make any Installment Payment when due.

(b) The occurrence of an Event of Nonappropriation.

(c) The City's breaching or failing to perform or observe any term, condition or covenant of this Agreement on its part to be observed or performed, other than as

provided in subsections (a) or (b) above, including payment of any Additional Payment, for a period of 15 days after written notice specifying such failure and requesting that it be remedied shall have been given to the City by BB&T, unless BB&T shall agree in writing to an extension of such time prior to its expiration.

(d) The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law by or against the City as a debtor, or the appointment of a receiver, custodian or similar officer for the City or any of its property, and the failure of such proceedings or appointments to be vacated or fully stayed within 30 days after the institution or occurrence thereof.

(e) Any warranty, representation or statement made by the City in this Agreement is found to be incorrect or misleading in any material respect on the Closing Date (or, if later, on the date made).

(f) Any lien, charge or encumbrance (other than Permitted Encumbrances) prior to or affecting the validity of the Agreement is found to exist, or proceedings are instituted against the City to enforce any lien, charge or encumbrance against the Mortgaged Property and such lien, charge or encumbrance would be prior to the lien of this Agreement.

(g) The City's failing to pay when due any principal of or interest on any of its general obligation debt.

7.02. Remedies on Default. Upon the continuation of any Event of Default, BB&T may, without any further demand or notice, exercise any one or more of the following remedies:

(a) Declare the unpaid principal components of the Installment Payments immediately due and payable;

(b) Proceed by appropriate court action to enforce the City's performance of the applicable covenants of this Agreement or to recover for the breach thereof;

(c) Avail itself of all available remedies under this Agreement, including execution and foreclosure as provided in Sections 8.03 and 8.04, and recovery of attorneys' fees and other expenses.

Notwithstanding any other provision of this Agreement, City, the Deed of Trust Trustee and BB&T intend to comply with Section 160A-20. No deficiency judgment may be entered against the City in violation of Section 160A-20.

7.03. Execution on Personal Property. Upon the continuation of any Event of Default and in addition to all other remedies granted in this Agreement, BB&T shall have all the rights and remedies of a secured party under the UCC and may proceed as to the personal property portion of the Mortgaged Property in the same manner as provided in this Agreement for the real property portion, with BB&T having no obligation to proceed against real or personal property in preference to the other.

7.04. Foreclosure; Sale under Power of Sale.

(a) Right to foreclosure or sale. Upon the occurrence and continuation of an Event of Default, at BB&T's request, the Deed of Trust Trustee shall foreclose Mortgaged Property by judicial proceedings or, at BB&T's option, the Deed of Trust Trustee shall sell (and is hereby empowered to sell) all or any part of the Mortgaged Property (and if in part, any such sale shall in no way adversely affect the lien created hereby against the remainder) at public sale to the last and highest bidder for cash (free of any equity of redemption, homestead, dower, curtesy or other exemption, all of which the City expressly waives to the extent permitted by law) after compliance with applicable State laws relating to foreclosure sales under power

of sale. The Deed of Trust Trustee shall, at BB&T's request, execute a proper deed or deeds to the successful purchaser at such sale.

(b) Bank's bid. BB&T may bid and become the purchaser at any sale under this Agreement, and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Required Payments the proceeds of sale net of sale expenses, including the Deed of Trust Trustee's commission, and after payment of such taxes and assessments as may be a lien on the Mortgaged Property superior to the lien of this Agreement (unless the Mortgaged Property is sold subject to such liens and assessments, as provided by State law).

(c) City's bid. The City may bid for all or any part of the Mortgaged Property at any foreclosure sale; provided, however, that the price bid by the City may not be less than an amount sufficient to provide for full payment of the Required Payments.

(d) Successful bidder's deposit. At any such sale the Deed of Trust Trustee may, at its option, require any successful bidder (other than BB&T) immediately to deposit with the Deed of Trust Trustee cash or a certified check in an amount equal to all or any part of the successful bid, and notice of any such requirement need not be included in the advertisement of the notice of such sale.

(e) Application of sale proceeds. The proceeds of any foreclosure sale shall be applied in the manner and in the order prescribed by State law, it being agreed that the expenses of any such sale shall include a commission to the Deed of Trust Trustee of five percent of the gross sales price for making such sale and for all services performed under this Agreement. Any proceeds of any such sale remaining after the payment of all Required Payments and the prior application thereof in accordance with State law shall be paid to the City.

7.05 Possession of Mortgaged Property. After a foreclosure sale, the City shall immediately lose the right to possess, use and enjoy the Mortgaged Property (but may remain in possession of the Mortgaged Property as a tenant at will of BB&T), and thereupon the City (a) shall pay monthly in advance to BB&T a fair and reasonable rental value for the use and occupation of the Mortgaged Property (in an amount BB&T shall determine in its reasonable judgment), and (b) upon BB&T's demand, shall deliver possession of the Mortgaged Property to BB&T or, at BB&T's direction, to the purchaser of the Mortgaged Property at any judicial or foreclosure sale under this Agreement.

In addition, upon the continuation of any Event of Default, BB&T, to the extent permitted by law, is hereby authorized to (i) take possession of the Mortgaged Property, with or without legal action, (ii) lease the Mortgaged Property, (iii) collect all rents and profits therefrom, with or without taking possession of the Mortgaged Property, and (iv) after deducting all costs of collection and administration expenses, apply the net rents and profits first to the payment of necessary maintenance and insurance costs, and then to the City's account and in reduction of the City's corresponding Required Payments in such fashion as BB&T shall reasonably deem appropriate. BB&T shall be liable to account only for rents and profits it actually receives.

7.06. No Remedy Exclusive; Delay Not Waiver. All remedies under this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy. If any Event of Default shall occur and thereafter be waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed a waiver of any other breach under this Agreement.

7.07. Payment of Costs and Attorney's Fees. If BB&T employs an attorney to assist in the enforcement or collection of Required Payments, or if the Deed of Trust Trustee or BB&T voluntarily or otherwise shall become a party or parties to any suit or legal proceeding (including a proceeding conducted under any state or federal

bankruptcy or insolvency statute) to protect the Mortgaged Property, to protect the lien of this Agreement, to enforce collection of the Required Payments or to enforce compliance by the City with any of the provisions of this Agreement, the City agrees to pay reasonable attorneys' fees and all of the costs that may reasonably be incurred (whether or not any suit or proceeding is commenced), and such fees and costs (together with interest at the Prime Rate) shall be secured as Required Payments.

ARTICLE VIII

MISCELLANEOUS

8.01. Notices. (a) Any communication required or permitted by this Agreement must be in writing.

(b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, addressed as follows:

(i) if to the City, to Post Office Box 550, Newton, North Carolina, 28658, Attention: Finance Officer;

(ii) if to the Deed of Trust Trustee, to Post Office Box 31273, Charlotte, North Carolina 28231; or

(iii) if to BB&T, to Post Office Box 31273, Charlotte, North Carolina 28231, Attention: Account Administration/Municipal.

(c) Any communication to the Deed of Trust Trustee shall also be sent to BB&T.

(d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

8.02. No Assignments by City. The City shall not sell or assign any interest in this Agreement.

8.03. Assignments by BB&T. BB&T may, at any time and from time to time, assign all or any part of its interest in the Site, the Facilities or this Agreement, including, without limitation, BB&T's rights to receive Required Payments. Any assignment made by BB&T or any subsequent assignee shall not purport to convey any greater interest or rights than those held by BB&T pursuant to this Agreement.

The City agrees that this Agreement may become part of a pool of obligations at BB&T's or its assignee's option. BB&T or its assignees may assign or reassign all or any part of this Agreement, including the assignment or reassignment of any partial interest through the use of certificates evidencing participation interests in this Agreement. Any assignment by BB&T may be only to a bank, insurance company, or similar financial institution or any other entity approved by the LGC. Notwithstanding the foregoing, no assignment or reassignment of BB&T's interest in the Mortgaged Property or this Agreement shall be effective unless and until the City shall receive a duplicate original counterpart of the document by which such assignment or reassignment is made disclosing the name and address of each such assignee.

The City further agrees that BB&T's interest in this Agreement may be assigned in whole or in part upon terms which provide in effect that the assignor or assignee will act as a collection and paying agent for any holders of certificates of participation in this Agreement, provided the City receives a copy of such agency contract and such collection and paying agent covenants and agrees to maintain for the full remaining term of this Agreement a written record of each assignment and reassignment of such certificates of participation.

The City agrees to execute any document reasonably required in connection with any assignment. Any assignor must provide notice of any assignment to the City, and the City shall keep a complete and accurate record of all assignments as required by the Code. After the giving of any such notice, the City shall thereafter make all payments in accordance with the notice to the assignee named therein and shall, if so requested, acknowledge such assignment in writing, but such acknowledgment shall in no way be deemed necessary to make the assignment effective.

8.04. Amendments. No term or provision of this Agreement may be amended, modified or waived without the prior written consent of the City and BB&T.

8.05. No Marshalling. The City hereby waives any and all rights to require marshalling of assets in connection with the exercise of any remedies provided in this Agreement or as permitted by law.

8.06. Governing Law. The City, BB&T and the Deed of Trust Trustee intend that State law shall govern this Agreement.

8.07. Liability of Officers and Agents. No officer, agent or employee of the City shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers or agents shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve an officer, agent or employee of the City from the performance of any official duty provided by law.

8.08. Covenants Running with the Land. All covenants contained in this Agreement shall run with the real estate encumbered by this Agreement.

8.09. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

8.10. Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

8.11. Entire Agreement. This Agreement constitutes the City's entire agreement with respect to the general subject matter covered hereby.

8.12. Binding Effect. Subject to the specific provisions of this Agreement, and in particular Section 9.03, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the City has caused this instrument to be executed as of the day and year first above written by duly authorized officers.

(SEAL)	
ATTEST:	CITY OF NEWTON, NORTH CAROLINA
Rita K. Williams	Robert A. Mullinax
Printed Name: Rita K. Williams	Printed Name: Robert A. Mullinax
Title: City Clerk	Title: Mayor

* * * * *

STATE OF NORTH CAROLINA;
CATAWBA COUNTY

I, Beunice R. Roberts, a Notary Public of such County and State, certify that Robert A. Mullinax and Rita K. Williams personally came before me this day and acknowledged that they are the Mayor and City Clerk, respectively, of the City of Newton, North Carolina, and that by authority duly given and as the act of the City of Newton, North Carolina, the foregoing instrument was signed in the City's name by such Mayor, sealed with its corporate seal and attested by such City Clerk.

WITNESS my hand and official stamp or seal, this 9th day of September, 2004.

[SEAL]

Beunice R. Roberts, Notary Public

My commission expires: 10-20-08

* * * * *

This contract has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

Janice T. Burke
Secretary, North Carolina
Local Government Commission

By _____
[Janice T. Burke or
Designated Assistant]

[Financing Agreement and Deed of Trust from the City of Newton, North Carolina, for the benefit of Branch Banking and Trust Company]

EXHIBIT A -- SITE DESCRIPTION

EXHIBIT B -- IMPROVEMENTS DESCRIPTION

EXHIBIT C -- EXISTING ENCUMBRANCES

EXHIBIT D -- PAYMENT SCHEDULE

Payment Schedule to Financing Agreement and Deed of Trust dated as of October ____, 2004 (the "Financing Agreement"), granted by the City of Newton, North Carolina, to F. Louis Loyd, III, Deed of Trust Trustee, for the benefit of Branch Banking and Trust Company

Contract Number: 003-1405245-026

The payments required to repay the advance made pursuant to the Financing Agreement call for an amortization period of approximately fifteen (15) years. Payments are quarterly in arrears in the amount of \$51,063.32. A portion of each payment is paid as and represents payment of interest at an annual interest rate of 3.97%.

Payments are due beginning on January __, 2005, and quarterly thereafter, with a final payment of all outstanding principal and accrued and unpaid interest due on October __, 2019, all as set forth in the amortization schedule.

The City Council of the City of Newton, North Carolina met in a regular meeting in the City Council Chambers at the City Hall in Newton, North Carolina, the regular place of meeting, at 7:00 p.m. on September 7, 2003

Present: Mayor Robert A. Mullinax, presiding, and Council Members Ann Stedman, Al Gaither, Wayne Dellinger, Tom Rowe, Thomas Dixon and Roy Johnson

Absent: Council Members - NONE

Also present: City Manager Edward F. Burchins, Assistant City Manager Glenn Pattishall,

Finance Director James A. Baker, City Attorney Larry W. Pitts and City Clerk Rita K. Williams.

The Mayor announced that this was the hour and day of the public hearing on a proposed installment financing agreement to be entered into by the City of Newton (the "City"), pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended (the "Act") in a principal amount not to exceed \$2,300,000 for the purpose of financing the cost of various improvements to the City's Clarks Creek Wastewater Treatment Plant (the "Project"). Such financing would be secured by a deed of trust on all or a portion of the Project being financed.

The Mayor acknowledged due publication of a notice of public hearing in a newspaper with a general circulation in said City as required by the Act and directed the City Clerk to attach the affidavit showing publication in said paper as Exhibit A hereto.

The Mayor then announced that the City Council would immediately hear anyone who might wish to be heard on the advisability of the proposed project or financing as so described.

A list of any persons making comments and a summary of such comments are attached as Exhibit B hereto.

The public hearing was closed.

All statements and comments by participants of the public hearing were duly considered by the City Council.

Thereupon, Council Member Johnson introduced the following resolution the title of which was read and copies of which had been previously distributed to each Council Member;

RESOLUTION #36-2004

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF CERTAIN IMPROVEMENTS TO THE CLARKS CREEK WASTEWATER TREATMENT PLANT PURSUANT TO AN INSTALLMENT FINANCING; REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION THEREWITH

BE IT RESOLVED by the City Council (the "City Council") for the City of Newton, North Carolina (the "City ") as follows:

Section 1. The City Council does hereby find and determine as follows:

(a) There exists in the City a need to make various improvements to the City's Clarks Creek Wastewater Treatment Plant (the "Project").

(b) In order to pay the costs of the Project and to pay certain other costs associated with the Project, the City Council has determined to enter into a Financing Agreement and Deed of Trust, to be dated as of the date of delivery thereof (the "Agreement"), from the City to the deed of trust trustee named therein, for the benefit of Branch Banking and Trust Company (the "Bank"), pursuant to which the Bank will advance the City amounts sufficient to pay the cost of financing the Project, and the City will repay the advancement in installments, with interest (the "Installment Payments"). In order to secure such payments, said Agreement will grant a lien on all or a portion of the Project, together with all improvements and fixtures thereon.

(c) There has been presented to the City Council at this meeting a draft of the Agreement.

(d) It is in the best interest of the City to enter into the Agreement in that such plan of finance will result in providing financing for the Project in an efficient and cost effective manner.

(e) Entering into the Agreement is preferable to a general obligation bond and revenue bond issue in that (I) the City does not have sufficient constitutional authority to issue non-voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution because the City has not retired a sufficient amount of debt in the preceding fiscal year to issue a sufficient amount of general obligation bonds for the Project without an election; (ii) the amount of financing does not justify the use of revenue bonds to finance the Project; (iii) the cost of the Project exceeds the amount to be prudently provided from currently available appropriations and unappropriated fund balances; (iv) the circumstances existing require that funds be available to commence construction of the Project as soon as practicable and the time required for holding an election for the issuance of voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution and the Local Government Bond Act will delay the commencement of construction of the Project by several months; and (v) there can be no assurances that the issuance of general obligation bonds to finance the Project would be approved by the voters and the necessity of the Project dictates that the Project be financed by a method that assures that the Project will be constructed in an expedient manner.

(f) Based upon information provided to the City Council, the costs of the financing described above is reasonably comparable to the costs associated with other alternative means of financing and is acceptable to the City Council.

(g) Special counsel to the City will render an opinion to the effect that the proposed undertaking as described above is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina.

(h) The debt management policies of the City have been carried out in strict compliance with law, and the City is not in default under any obligation for repayment of borrowed money.

(I) No tax rate increase is anticipated to be necessary to pay the Installment Payments.

Section 2. The City Council hereby authorizes, ratifies and approves the filing of an application with the Local Government Commission for approval of the Agreement and requests the Local Government Commission to approve the Agreement and the proposed financing and in connection therewith.

Section 3. In order to provide for the financing of the Project, the City is hereby authorized to enter into the Agreement to receive an advancement in installments pursuant thereto in a principal amount not to exceed \$2,300,000. The City shall repay the advancement in installments due in the amounts and times set forth in the Agreement. The payment of Installment Payments shall be designated as principal and interest as provided in the Agreement.

Section 4. The City Council hereby approves the forms of the Agreement in substantially the form presented at this meeting. The Mayor and City Manager are each hereby authorized to execute and deliver on behalf of the City each of said documents in substantially the forms presented at this meeting, containing such insertions, deletions and filling in of blanks as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the City Council of any such changes. The Clerk or any Assistant or Deputy Clerk is hereby authorized to affix the official seal of the City to each of said documents and to attest the same to the extent required.

Section 5. No deficiency judgment may be rendered against the City in any action for breach of any contractual obligation under the Agreement, and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under the Agreement.

Section 6. The Mayor of the City Council, the City Manager, the Finance Director and the City Clerk of the City, and any other officers, agents and employees of the City are hereby authorized and directed to deliver such certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 7. The City hereby represents that it reasonably expects that it, all subordinate entities thereof and all issuers issuing obligations on behalf of the City will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations (other than private-activity bonds, except for qualified 501(c)(3) bonds as defined in the Code, and obligations issued to refund (other than to advance refund) any obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation) during calendar year 2004. In addition, the City hereby designates each of the installment payments under the Agreement as a "qualified tax-exempt obligation" for the purposes of the Code.

Section 8. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Roy Johnson, seconded by Council Member Tom Rowe, the foregoing resolution entitled "RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF CERTAIN IMPROVEMENTS TO THE CLARKS CREEK WASTEWATER TREATMENT PLANT PURSUANT TO AN INSTALLMENT FINANCING; REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION THEREWITH" was passed by the following vote:

Ayes: Council Members Ann Stedman, Al Gaither, Tom Rowe, Thomas Dixon, Roy Johnson

Noes: Council Member Wayne Dellinger

* * * * *

I, Rita K. Williams, City Clerk of the City Newton, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said City Council for said City, at a regular meeting held on September 7, 2004, as it relates in any way to the conduction of a public hearing upon an installment financing agreement and the passage of the foregoing resolution regarding entering into an installment financing agreement and related documents to finance certain

wastewater improvements the acquisition of land and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that a schedule of the regular meetings of said City Council, stating that the regular meetings of said City Council are held on the first Tuesday and third Wednesday of each month at 7:00 p.m. in the City Council Chambers at the City Hall in Newton, North Carolina, has been on file with me for at least seven calendar days prior to said meeting, all in accordance with G.S. §143-318.12.

WITNESS my hand and official seal of said City Council this 7th day of September, 2004.

Rita K. Williams, City Clerk

[SEAL]

A motion was made by Mayor Pro Tem Rowe, seconded by Council Member Johnson, and unanimously adopted to approve the Financing Terms Resolution:

RESOLUTION # 37-2004
Resolution Approving Financing Terms

WHEREAS: The City of Newton, North Carolina (the "City") has previously determined to undertake a project for an installment financing of a water treatment plant, and the Finance Director has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"). The amount financed shall not exceed \$2,300,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.97%, and the financing term shall not exceed fifteen (15) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.

3. The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Director is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as

"qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 7th day of September, 2004.

Robert A. Mullinax, Mayor

Attest:

Rita K. Williams, City Clerk

A budget ordinance was included in the agenda packet for providing funding to make the required quarterly debt service payment associated with the Clarks Creek Wastewater improvement loan. Each quarterly debt service payment would be \$51,063.32.

Council Member Dixon stated that recently he recommended that debt service payments be made quarterly to save money. However, in this case, no money was budgeted for quarterly payments and he did not think it should be made this time but he wanted the staff to look at making quarterly payments on future debt.

A motion was made by Council Member Johnson, seconded by Council Member Dixon, and unanimously adopted that the debt service payments associated with the Clarks Creek Wastewater improvement loan be made in annual payments.

ITEM 6 - OLD BUSINESS:

- A. Consideration of budget ordinance for Wastewater Treatment Plant generator repairs.

ITEM DELAYED

- B. Consideration of alternate bids on Wastewater Treatment Plant upgrade.

Director of Public Works and Utilities Director Marty Wilson reported that Phase I of the Wastewater Treatment Plant upgrades was approved by the Council on June 1, 2004 and totaled \$1,839,031. The contract between Newton and the City of Conover specifies that Conover will pay fourteen percent (14%) of the total cost of this project to Newton which is equal to \$290,549 and includes engineering costs. He said the staff recommended that \$201,719 of this payment be used for process piping and flow meter replacement at the waste treatment plant. Both are integral parts of the plant which need to be rehabilitated.

Mr. Wilson said it was also recommended that the additional funds from Conover be reserved for future upgrades or improvements to the Clark Creek Wastewater Plant. The total amount that would be available for reserve would be \$117,071. He said the staff recommended the change order for the wastewater treatment plant project be approved and that the existing budget ordinance be amended to reflect the change.

A motion was made by Council Member Johnson, seconded by Council Member Gaither, and unanimously adopted that the budget ordinance be amended as recommended to reflect the change order.

ORDINANCE # 2004.35 ATTACHED

ITEM 7 - NEW BUSINESS:

A. Consideration of adoption of ordinance to recognize infrastructure contribution and appropriate expenditures.

City Manager Burchins recommended a budget ordinance amendment be adopted to recognize the contribution of the infrastructure of Shook Builder Supply which includes water, sewer, streets, sidewalk and storm drainage which was accepted by the Council in November of 2003. He said adoption of this ordinance was an accounting entry which needed to be made and no funds will be expended.

A motion was made by Council Member Rowe, seconded by Council Member Gaither, and unanimously adopted to approve the ordinance as recommended by the City staff.

ORDINANCE #2004.36 ATTACHED

ITEM 8 - CITY MANAGER'S REPORT.

City Manager Burchins reported that the staff has recommended that the City change its way of making its incentive package to Z F Lemforder Corporation. He stated the staff recommended giving Z F a cash grant of \$1,280,000 in lieu of the original incentive package of purchasing the property for Z F, extending the sewer line, making improvements to the site, etc. He said the change is necessary due to Z F changing their financing plans. He recommended the Council approve the cash grant provided Z F meets the following requirements:

1. That the Performance Agreement in the form presented to and reviewed by the City Council, a copy of which is incorporated herein by reference, is hereby approved; and
2. That the Mayor of the City of Newton is authorized to execute and deliver the Performance Agreement as presented and to make changes as he in his discretion deems necessary as long as such changes are not materially adverse to the City.

A motion was made by Council Member Dellinger, seconded by Council Member Johnson, and unanimously adopted to approve the following Resolution:

RESOLUTION # 38-2004
A RESOLUTION AUTHORIZING JOINT ECONOMIC DEVELOPMENT AGREEMENT
WITH Z. F. LEMFORDER CORPORATION

WHEREAS, increased new economic development and expansion of existing industries is beneficial to the citizens of the City of Newton; and

WHEREAS, North Carolina General Statute 158-7.1 provides a mechanism for cities to encourage industries to locate within their jurisdiction through the use of economic development incentives; and

WHEREAS, the City of Newton has come to an agreement with Z F Lemforder Corporation, whereby that business organization will increase the value of existing property by investing approximately FORTY FIVE MILLION DOLLARS (\$45,000,000) in improvements; and

WHEREAS, in exchange for the assistance of the City and the granting by the City of economic development incentives for the contemplated purchase and subsequent expansion, Z F Lemforder Corporation agrees to make the above-described investment; and

WHEREAS, The City of Newton City Council has determined and found that the Z F Lemforder Corporation investment will result in the creation of a substantial number

of jobs in the City that pay at or above the median average wage; and

WHEREAS, the City Attorney and Counsel for Z F Lemforder Corporation have drafted a Performance Agreement and it has been presented to the City Council to reduce to writing the understandings of the parties regarding completion of the planned investment.

NOW, THEREFORE, LET IT BE RESOLVED AS FOLLOWS:

1. That the Performance Agreement in the form presented to and reviewed by the City Council, a copy of which is incorporated herein by reference, is hereby approved; and
2. That the Mayor of the City of Newton is authorized to execute and deliver the Performance Agreement as presented and to make changes as he in his discretion deems necessary as long as such changes are not materially adverse to the City.

This the 7th day of September, 2004.

Robert A. Mullinax, Mayor

Attest:

Rita K. Williams, City Clerk

The October 5th meeting was cancelled due to some of the staff being out of town.

The meeting was recessed until Wednesday, September 22nd at 6:00 P.M. to have a work session on capital improvements.

Respectfully submitted,

Robert A. Mullinax

Rita K. Williams, City Clerk